

### **REMARKS**

In the Office Action, the Examiner rejected claims 1-13 and 15-32. in view of the following remarks, Applicant respectfully requests reconsideration and allowance of all pending claims.

#### **Claim Rejections under 35 U.S.C. § 103(a)**

The Examiner rejected claims 1-5, 7-11, and 13-31 under 35 U.S.C. § 103(a) as being unpatentable over Sarno, (U.S. Pub. 2002/0042751 A1) (hereinafter “Sarno”) in view of Jamroga et al., (U.S. Patent No. 6,574,742) (hereinafter “Jamroga”); claim 6 as being unpatentable over Sarno in view of Jamroga et al., and further in view of Wong et al., (U.S. Patent No. 6,260,021) (hereinafter “Wong”); and claims 12 and 32 as being unpatentable over Sarno in view of Jamroga et al., and further view of Funahashi, (U.S. 6,820,100) (hereinafter “Funahashi”).

#### ***Legal Precedent***

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). To establish a *prima facie* case, the Examiner must not show that the combination includes *all* of the claimed elements, and also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to

deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

***Claim Features Missing from Cited References***

Turning to the claims, the present independent claim 1 recites, *inter alia*, “the query page comprises at least one question designed, when completed by the customer, to enable the information system to *determine a customer’s radiological imaging system usage* over a period of time.” Independent claim 13, as amended, recites, *inter alia*, “the query page being adapted to *elicit a customer’s radiological imaging system usage* over the period of time.” Independent claim 20, as amended, recites, *inter alia*, “a query page adapted to *elicit radiological imaging system usage information* from a customer on an electronic information system.” Similarly, independent claim 23 recites, *inter alia*, “wherein the query page comprises at least one question designed, when completed by the customer, to enable the information system to establish an amount of radiological imaging film consumed by a customer over a specified period of time.” Independent claim 29 recites, *inter alia*, “wherein the query page comprises at least one question designed, when completed by the customer, to enable the information system to establish an amount of storage capacity in a digital radiological image archiving system corresponding to an *amount of radiological images produced by a customer over a specified time period*.”

In the Final Office Action, the Examiner cited paragraphs 12, 15, 17, and 18 of the Sarno reference as disclosing these features. However, upon review of the cited paragraphs, it is clear that while Sarno discloses an electronic user interface for eliciting generic user information, Sarno is absolutely devoid of a query page designed to elicit or determine existing *usage* of a customer’s *radiological imaging system*. Indeed, the Examiner acknowledged that Sarno fails to even disclose a *radiological image archiving*

*system*,” much less teach or suggest a query form designed to elicit or determine usage of an upstream radiological imaging system.. *See*, Office Action, page 3 (emphasis added).

In an effort to salvage the rejection, the Examiner stated that a radiological imaging system “is well known in the art as evidenced by Jamroga.” *See*, Office Action, page 3 (citing Jamroga, col. 1, lines 48-65). However, this cited portion of the Jamroga merely discusses the Digital Imaging and Communications in Medicine (DICOM) standard. The cited portion is absolutely devoid of a teaching or suggestion to establish *usage of a customer’s radiological imaging system* over a period of time. Moreover, while Jamroga discusses benefits of converting from a film-based archive system to a digital-based archive system, and mentions that images may be identified by various information including the data and time the image was generated, it is plain that Jamroga never addresses establishing a customer’s usage of a radiological imaging system over time. *See*, Office Action, page 6 (citing Jamroga, col. 9, lines 23-33). Neither Sarno nor Jamroga, whether taken alone or in combination, teach or suggest a query page or form (e.g., having a question) used to elicit or determine a customer’s radiological imaging system usage.

In the “Response to Arguments” section of the Final Office Action, the Examiner did not find Applicant’s arguments persuasive. The Examiner stated:

As per applicants argument that Sarno fails to disclose a query page being adapted to elicit a customer’s system usage over the period of time, it is submitted that Sarno discloses such a system. Sarno discloses a survey generator with a series of questions is a query page, and figs. 1C and 1E show information such as historic and future activity costs with associated savings projections over time, (Sarno, figs. 1C, 1E, ¶ 12, 17, 18). Such information is used by Sarno to establish a cost-savings projection for a given period of time based on system

usage, storage capacity, or amount of images stored. As stated in the previous office action, it is the combination of such financial analysis with the well-known radiological image archiving system of Jamroga that forms the crux of the rejection. In response to applicant's arguments against the references individually, one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merk & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)

Final Office Action, page 11.

To the contrary, Applicant respectfully emphasizes that here both cited references, whether taken alone or in combination, are absolutely devoid of query page that elicits usage-time information about an *imaging system*. Indeed, as the Examiner acknowledged, Sarno does not disclose the eliciting of information about a radiological *imaging system* usage per time. Further, the secondary reference, Jamroga, is directed to the delivery and storage of images, and not to the upstream acquisition of the images. This is implicitly acknowledged by the Examiner in his conclusion that Jamroga discloses an image archiving system. See Final Office Action, page 11 (emphasis added). It should be emphasized it is impractical or even impossible in the context of Jamroga (which is directed to the downstream handling of images) to determine the usage of the upstream image acquisition systems, especially of individual image acquisition systems. To be sure, neither reference, whether taken alone or in combination, teaches or suggests information about a radiological *imaging system* usage over time.

In view of the foregoing, Applicant believes all independent claims (and their respective dependent claims) are patentable over the cited combination. Therefore, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 103.

***Dependent Claims***

As listed above, the Examiner rejected the dependent claims based on various cited combinations. However, the dependent claims are believed to be patentable for at least their dependency on an allowable base claim. It should be noted that the two additional cited references (Wong and Funahashi) do not obviate the deficiencies of the cited references discussed above with respect to the independent claims. Further, the dependent claims are believed to be patentable by virtue of the subject matter they separately recite. Moreover, there is no motivation to combine these disparate references cited by the Examiner. Accordingly, for these additional reasons, Applicant respectfully requests that the Examiner withdraw the foregoing rejections of the dependent claims.

**Conclusion**

The Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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